

## Appendix

# In the Supreme Court of the United States

OCTOBER TERM, 1970

---

No. 5342

JAMES WINTFORD REWIS AND MARY LEE WILLIAMS,  
PETITIONERS

v.

UNITED STATES, RESPONDENT

---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

---

PETITION FOR CERTIORARI FILED JUNE 5, 1970  
CERTIORARI GRANTED OCTOBER 12, 1970

## INDEX

	Page
Excerpts of docket entries (66-65-Cr-J) .....	3
Modified Indictment (66-65-Cr-J) .....	7
Original Indictment (66-65-Cr-J) .....	18
Requested Instructions (Government's 16 and 32; Rewis' 12 and 13) .....	33
Portions of Instructions to Jury .....	35
Opinion of the Court of Appeals .....	51
Judgments .....	58
Order denying petition for rehearing .....	60
Order granting motion for leave to proceed in forma pauperis and granting petition for certiorari .....	60

(1)

## PERTINENT DOCKET ENTRIES

1966

- Apr. 6 Indictment returned at Jax., Fla.
- May 6 James Wintfored Rewis Arraigned and Plead Not Guilty to all Counts 1 through 18.
- May 6 Mary Lee Williams Arraigned and Plead Not Guilty to Counts 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 & 18.
- May 6 Ethel Scott Owens Arraigned and Plead Not Guilty to Counts 1, 4 & 5.
- May 6 Oliver Louis Nightengale, Sr. Arraigned and Plead Not Guilty to Counts 1, 10, 11, 14 & 16.
- May 6 Robert Lee Fuller, Sr. Arraigned and Plead Not Guilty to Counts 1, 10, 11 & 12.
- May 6 Lemon Dawson Arraigned and Plead Not Guilty to Counts 1, 7 & 17.
- May 6 Alex Powell Arraigned and Plead Not Guilty to Counts 1, 8, 9, 10 & 15.
- May 6 Max Hugh Sullivan Arraigned and Plead Not Guilty to Counts 1, 12, 13 & 14.
- May 6 Ola Mae Smith Arraigned and Plead Not Guilty to Counts 1, 12, 14, 15, 16 & 17.
- May 6 Trennia Owens Arraigned and Plead Not Guilty to Counts 1, 6, 14 & 15.

1967

- Sept. 11 Proceedings on Trial and Jury Empanelled.
- Sept. 21 Motion for Judgment of Acquittal as to each defendant.
- Sept. 21 Motion to Strike from Count 1, Overt Acts as to each defendant.
- Sept. 21 Motion for Judgment of Acquittal as to Defts. Ethel Scott Owens, Lemon Dawson, Max Hugh Sullivan, & Ola Mae Smith—Granted and Denied as to all other defendants.
- Sept. 21 Motion to Strike as to Defts. Ethel Scott Owens, Lemon Dawson, Max Hugh Sullivan & Ola Mae Smith—Granted and denied as to all other defendants.
- Sept. 21 Motion for Judgment of Acquittal as to Deft. Rewis as to Counts 4, 5, 7, 13 & 18—Granted.
- Sept. 21 Motion for Judgment of Acquittal as to Deft. Williams as to Count 7, 13 & 18—Granted.
- Sept. 21 Motion for Judgment of Acquittal as to each of Counts remaining in the Indictment as to defts. Rewis, Williams, Powell, Trennia Owens, Nightengale & Fuller—Denied.
- Sept. 21 Motion to Strike Overt Acts from Count 1 as to defts. Rewis, Williams, Powell, Trennia Owens, Nightengale & Fuller—Renewed—Denied.
- Sept. 21 Judgment of Dismissal as to Deft. James Wintfored Rewis as to Cts. 4, 5, 7, 13 & 18.

- Sept. 21 Judgment of Dismissal as to Deft. Mary Lee Williams as to Cts. 7, 13 & 18.
- Sept. 21 Judgment of Dismissal as to Deft. Ethel Scott Owens as to Cts. 1, 4 & 5.
- Sept. 21 Judgment of Dismissal as to Deft. Lemon Dawson as to Cts. 1, 7 & 17.
- Sept. 21 Judgment of Dismissal as to Deft. Max Hugh Sullivan as to Cts. 1, 12, 13, 14.
- Sept. 21 Judgment of Dismissal as to Deft. Ola Mae Smith as to Cts. 1, 12, 14, 15, 16 & 17.
- Sept. 25 Arguments of Counsel.
- Sept. 26 Jury Charges.
- Sept. 26 VERDICT as to Deft. Rewis: GUILTY as to Counts 1, 2, 3, 8, 9, 10, 11, 12, 14, 16 & 17, and NOT GUILTY as to Counts 6 & 15.
- Sept. 26 VERDICT as to Deft. Williams: GUILTY as to Counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 and NOT GUILTY as to Counts 6 & 15.
- Sept. 26 VERDICT as to Deft. Powell: NOT GUILTY as to Counts 1, 8, 9, 10 & 15.
- Sept. 26 VERDICT as to Deft. Trennial Owens: NOT GUILTY AS TO Counts 1, 6, 14 & 15.
- Sept. 26 VERDICT as to Deft. Nightengale: GUILTY as to Counts 10, 11, 14 & 16 and NOT GUILTY as to Count 1.
- Sept. 26 VERDICT as to Deft. Fuller: GUILTY as to Counts 10, 11 & 12 and NOT GUILTY as to Count 1.
- Sept. 26 Judgment of Dismissal as to Deft. Alex Powell as to Counts 1, 8, 9, 10 & 15.
- Sept. 26 Judgment of Dismissal as to Deft. Trennial Owens as to Counts 1, 6, 14 & 15.
- Sept. 26 Government's Requested Instructions.
- Sept. 26 Defendant Rewis' Requested Instructions.
- Sept. 26 Defendant Williams' Requested Instructions.
- Sept. 26 Judgment of Dismissal as to Deft. Rewis as to Counts 6 & 15.
- Sept. 26 Judgment of Dismissal as to Deft. Williams as to Counts 6 & 15.
- Oct. 3 Motion for Judgment of Acquittal Notwithstanding the Verdict or for a new trial by deft. Mary Williams.
- Oct. 20 Motion by Deft. James Rewis for Judgment of Acquittal or, in the alternative for New Trial.
- Nov. 7 Order denying motion for judgment of acquittal notwithstanding the verdict or for a new trial, denying the motion for judgment of acquittal or in the alternative for a new trial as to defts. Mary Williams and James Rewis, respectively, further denying the motion for judgment of acquittal or in the alternative for a new trial as to defts. Oliver Nightengale and Robert Fuller, Sr., ordering a pre-sentence investigation as to each deft., continuing bonds in force and directing the defts to appear for imposition of sentence at 11:00 a.m. Friday, Dec. 15, 1967, in Courtroom 2.

- Dec. 15 SENTENCE as to Deft. James Wintford Rewis: 5 yrs. impr. as to each of Counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 to run concurrently with each other. 1 yr. as to Counts 2 & 3 to run concurrently with each other and concurrently with sentence imposed in Cts. 1, 8, 9, 10, 11, 12, 14, 16 & 17.
- Dec. 15 SENTENCE as to Deft. Williams: 3 years as to each of counts 1, 8, 9, 10, 11, 12, 14, 16 & 17 to run concurrently with each other. Deft. shall become eligible for parole pursuant to Title 18, Sec. 4208(a)(2)
- Dec. 20 Notice of Appeal as to Deft. James W. Rewis.
- Dec. 22 Notice of Appeal as to Deft. Mary Lee Williams.
- 1968
- Mar. 4 Transcript of proceedings at Trial filed (5 volumes). (Enclosed as numbered by the Official Reporter.)
- 1970
- Feb. 16 Opinion of Court of Appeals.
- Feb. 16 Mandate of Court of Appeals reversing and remanding as to the defendants Robert Lee Fuller, Sr., and Oliver Louis Nightengale, Sr., for an entry of Judgment of Acquittal in accordance with the Opinion.



United States District Court, Middle District of  
Florida, Jacksonville Division

No. 66-65-Cr-J (18 USC 371, 18 USC 1952, and  
Section 2, 26 USC 7203)

UNITED STATES OF AMERICA

*v.*

JAMES WINTFORED REWIS; AGNES MYREL REWIS; MARY  
LEE WILLIAMS; OLIVER LOUIS NIGHTENGALE, SR.;  
ROBERT LEE FULLER, SR.; ALEX POWELL; TRENNIAL  
OWENS

MODIFIED INDICTMENT

The Grand Jury charges:

COUNT ONE

From on or about May 8, 1965, and continuously  
at all times thereafter to and including August 14,  
1965, in Nassau County, in the Middle District of  
Florida, and in Camden County, in the Southern Dis-  
trict of Georgia, and in other places to the Grand Jury  
unknown, the defendants, JAMES WINTFORED  
REWIS, AGNES MYREL REWIS, MARY LEE  
WILLIAMS, OLIVER LOUIS NIGHTENGALE,  
SR., ROBERT LEE FULLER, SR., ALEX  
POWELL and TRENNIAL OWENS, did unlaw-  
fully, willfully and knowingly conspire, combine,  
confederate and agree together and with Dorothy  
Mae Evans, Charlotte Williams and Josephine Wright  
and with divers other persons whose names are to the  
Grand Jury unknown, to commit certain offenses  
against the United States of America, namely:

1. To travel in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery, and thereafter to perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

And the Grand Jury further charges that in pursuance of said conspiracy, combination, confederation and agreement and to effect and accomplish the objects thereof, the defendants did do and commit the following overt acts:

1. On May 8, 1965, TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

2. On May 15, 1965, JAMES WINTFORED REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

4. On May 22, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

5. On May 22, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

6. On May 29, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the

residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

7. On May 29, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

8. On June 5, 1965, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR. and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

9. On June 12, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

10. On June 12, 1965, ROBERT LEE FULLER, SR. and OLIVER LOUIS NIGHTENGALE, SR. travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

11. On June 19, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

12. On June 19, 1965, ROBERT LEE FULLER, SR. travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

13. On July 3, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

15. On July 10, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the

residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

16. On July 10, 1965, OLIVER LOUIS NIGHT-ENGAL, SR. and TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

17. On July 17, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

18. On July 17, 1965, JOSEPHINE WRIGHT, ALEX POWELL and TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

19. On July 24, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

20. On July 24, 1965, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS and OLIVER LOUIS NIGHTENGAL, SR., travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

21. On July 31, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

22. On July 31, 1965, CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

23. On August 7, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

24. On August 7, 1965, JOSEPHINE WRIGHT travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

25. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

26. On August 14, 1965, JOSEPHINE WRIGHT AND CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

27. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS possessed numbers, tickets, cash and other wagering paraphernalia.

29. On August 14, 1965, DOROTHY MAE EVANS checked up Cuba lottery sales at the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida; all in violation of Title 18, United States Code, Section 371.

#### COUNT TWO

During the period May 15, 1965, through June 30, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in sections 4421(1)(c) and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the

Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

### COUNT THREE

During the period July 1, 1965, through August 14, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c) and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

### COUNT SIX

On or about May 8, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, TRENIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully

and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT EIGHT

On or about May 22, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT NINE

On or about May 29, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management,

establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT TEN

On or about June 5, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT ELEVEN

On or about June 12, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS,



ROBERT LEE FULLER, SR., OLIVER LOUIS NIGHTENGALE, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT TWELVE

On or about June 19, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT FOURTEEN

On or about July 10, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, OLIVER LOUIS NIGHTENGALE, SR., TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT FIFTEEN

On or about July 17, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity;

in violation of Title 18, United States Code, Section 1952.

#### COUNT SIXTEEN

On or about July 24, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR. and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT SEVENTEEN

On or about July 31, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did un-

lawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

A true bill.

DAVE W. HARDEN,  
*Foreman.*

EDWARD F. BOARDMAN,  
*United States Attorney.*

By BERNARD NACHMAN,  
*Assistant United States Attorney.*

---

United States District Court, Middle District of  
Florida, Jacksonville Division

No. 66-65-Cr-J (18 USC 371, 18 USC 1952, 18 USC  
1953, and Section 2, 26 USC 7203)

UNITED STATES OF AMERICA

*v.*

JAMES WINTFORED REWIS, AGNES MYREL REWIS, MARY  
LEE WILLIAMS, ETHEL SCOTT OWENS, OLIVER LOUIS  
NIGHTENDALE, SR., ROBERT LEE FULLER, SR., LEMON  
DAWSON, ALEX POWELL, MAX HUGH SULLIVAN,  
OLA MAE SMITH, TRENNIAL OWENS

INDICTMENT FILED APRIL 6, 1966

The Grand Jury charges:

COUNT ONE

From on or about May 8, 1965, and continuously  
at all times thereafter to and including August 14,  
1965, in Nassau County, in the Middle District of  
Florida, and in Camden County, in the Southern Dis-

trict of Georgia, and in other places to the Grand Jury unknown, the defendants, JAMES WINTFORD REWIS, AGNES MYREL REWIS, MARY LEE WILLIAMS, ETHEL SCOTT OWENS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., LEMON DAWSON, ALEX POWELL, MAX HUGH SULLIVAN, OLA MAE SMITH and TRENNIAL OWENS, did unlawfully, willfully and knowingly conspire, combine, confederate and agree together and with Dorothy Mae Evans, Charlotte Williams and Josephine Wright and with divers other persons whose names are to the Grand Jury unknown, to commit certain offenses against the United States of America, namely:

1. To travel in interstate commerce with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery, and thereafter to perform and attempt to perform acts to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

2. To knowingly carry and send in interstate commerce records, paraphernalia, slips, papers, writings and other devices used and to be used and adapted for use in a numbers game; in violation of Title 18, United States Code, Section 1953.

And the Grand Jury further charges that in pursuance of said conspiracy, combination, confederation and agreement and to effect and accomplish the objects thereof, the defendants did do and commit the following overt acts:

1. On May 8, 1965, TRENNIAL OWENS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

2. On May 15, 1965, JAMES WINTFORED REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

3. On May 15, 1965, LEMON DAWSON travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

4. On May 22, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

5. On May 22, 1965, CHARLOTTE WILLIAMS, LEMON DAWSON and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

6. On May 29, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

7. On May 29, 1965, CHARLOTTE WILLIAMS and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

8. On June 5, 1965, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGALE, SR., ROBERT LEE FULLER, SR., and ALEX POWELL travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

9. On June 12, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

10. On June 12, 1965, ROBERT LEE FULLER, SR., and OLIVER LOUIS NIGHTENGALE, SR., travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

11. On June 19, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

12. On June 19, 1965, ROBERT LEE FULLER, SR., MAX HUGH SULLIVAN and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway, A1A, Yulee, Florida.

13. On July 3, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

14. On July 3, 1965, MAX HUGH SULLIVAN travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

15. On July 10, 1965, JAMES WINTFORD REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

16. On July 10, 1965, OLIVER LOUIS NIGHTENGALE, SR., MAX HUGH SULLIVAN, TRENNIAL OWENS and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.



17. On July 17, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

18. On July 17, 1965, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

19. On July 24, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

20. On July 24, 1965, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGAL, SR., and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

21. On July 31, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

22. On July 31, 1965, CHARLOTTE WILLIAMS, LEMON DAWSON and OLA MAE SMITH travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

23. On August 7, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

24. On August 7, 1965, JOSEPHINE WRIGHT travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.



25. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS visited the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

26. On August 14, 1965, JOSEPHINE WRIGHT and CHARLOTTE WILLIAMS travelled in interstate commerce from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

27. On August 14, 1965, JAMES WINTFORED REWIS and AGNES MYREL REWIS possessed numbers, tickets, cash and other wagering paraphernalia.

28. On August 14, 1965, ETHEL SCOTT OWENS transported Cuba numbers tickets from Camden County, Georgia, to the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida.

29. On August 14, 1965, DOROTHY MAE EVANS checked up Cuba lottery sales at the residence of Mary Lee Williams on U.S. Highway A1A, Yulee, Florida; all in violation of Title 18, United States Code, Section 371.

#### COUNT TWO

During the period May 15, 1965, through June 30, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c), and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District, in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

**COUNT THREE**

During the period July 1, 1965, through August 14, 1965, JAMES WINTFORED REWIS, who was then engaged in the business of accepting wagers, as defined in Sections 4421(1)(c), and 4421(2), Title 26, United States Code, in Nassau County, Florida, did willfully and knowingly fail to register with and pay to the District Director of Internal Revenue for the Jacksonville District in the Middle District of Florida, the special tax as required by the provisions of Sections 4411, 4412 and 4901(a), Title 26, United States Code; in violation of Title 26, United States Code, Section 7203.

**COUNT FOUR**

On or about August 14, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS and ETHEL SCOTT OWENS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT FIVE

On or about August 14, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS and ETHEL SCOTT OWENS unlawfully and willfully carried and sent and caused the carrying and sending in interstate commerce from Camden County, Georgia, to Nassau County, Florida, in the Middle District of Florida, records, paraphernalia, slips, papers, writings and other devices used and to be used and adapted for use in a numbers game; in violation of Title 18, United States Code, Section 1953.

## COUNT SIX

On or about May 8, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, TRENNIAL OWENS and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT SEVEN

On or about May 15, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, LEMON DAWSON and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT EIGHT

On or about May 22, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL, and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date,

they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT NINE

On or about May 29, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT TEN

On or about June 5, 1965, at Nassau County in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGAL, SR., ROBERT LEE FULLER, SR., ALEX POWELL and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County,

Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation, of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT ELEVEN

On or about June 12, 1965, at Nassau County, in the Middle District of Florida, and at Camden County, in the Southern District of Georgia, JAMES WINTFORD REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR., OLIVER LOUIS NIGHTENGALE, SR., and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT TWELVE

On or about June 19, 1965, at Nassau County, in the Middle District of Florida, and at Camden County,

in the Southern District of Georgia, JAMES WINTFORED REWIS, AGNES MYREL REWIS, ROBERT LEE FULLER, SR., MAX HUGH SULLIVAN, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT THIRTEEN

On or about July 3, 1965, JAMES WINTFORED REWIS, AGNES MYREL REWIS, MAX HUGH SULLIVAN and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT FOURTEEN

On or about July 10, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, OLIVER LOUIS NIGHTENGALE, SR., MAX HUGH SULLIVAN, TRENNIAL OWENS, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

## COUNT FIFTEEN

On or about July 17, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, ALEX POWELL, TRENNIAL OWENS, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said



date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT SIXTEEN

On or about July 24, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, JOSEPHINE WRIGHT, CHARLOTTE WILLIAMS, OLIVER LOUIS NIGHTENGAL, SR., OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT SEVENTEEN

On or about July 31, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS, CHARLOTTE WILLIAMS, LEMON DAWSON, OLA MAE SMITH and MARY LEE WILLIAMS unlawfully and willfully travelled and caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion,

management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

#### COUNT EIGHTEEN

On or about August 7, 1965, JAMES WINTFORD REWIS, AGNES MYREL REWIS and MARY LEE WILLIAMS unlawfully and willfully caused travel in interstate commerce from Camden County, Georgia, to Nassau County, Florida, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being a business enterprise involving gambling, in violation of Section 849.09, Florida Statutes, to-wit: a Cuba lottery; and thereafter on said date, they did unlawfully and willfully perform and cause to be performed acts facilitating the carrying on of said unlawful activity; in violation of Title 18, United States Code, Section 1952.

A true bill.

DAVE W. HARDEN,  
*Foreman.*

EDWARD F. BOARDMAN,  
*United States Attorney.*

By BERNARD NACHMAN,  
*Assistant United States Attorney.*

[Microfilmed on Roll No. 36]

No. 66-65-Cr-J

United States District Court, Middle District of  
Florida, Jacksonville Division

THE UNITED STATES OF AMERICA

v.

JAMES WINTFORD REWIS; AGNES MYREL REWIS;  
MARY LEE WILLIAMS; ETHEL SCOTT OWENS; OLIVER  
LOUIS NIGHTENGALE, Sr.; ROBERT LEE FULLER, Sr.;  
LEMON DAWSON; ALEX POWELL; MAX HUGH SUL-  
LIVAN; OLA MAE SMITH; TRENNIAL OWENS

### INDICTMENT

Violation: Wagering Tax (18 USC 371, 18 USC  
1952, 18 USC 1953, and Section 2, 26 USC 1203).

A true bill,

DAVE W. HARDEN,  
*Foreman.*

Filed in open court this 6th day of April, A.D. 1966.

WESLEY R. THIES,  
*Clerk.*

Bail, \$-----

### GOVERNMENT'S REQUESTED INSTRUCTION NO. 16—GIVE

You are instructed that the essential elements of the  
offense with which the defendants are charged are:

- (1) Travel in interstate commerce;
- (2) With intent to promote, manage, establish,  
carry on or facilitate the promotion, management,

establishment, or carrying on, of any unlawful activity.

You are further instructed as used in this section that "unlawful activity" includes any business enterprises involving gambling in violation of the laws of the State in which committed.

(3) And thereafter performs or attempts to perform the promotion, management, establishment or carrying on of the unlawful activity.

(Title 18, United States Code, Section 1952.)

### GOVERNMENT'S REQUESTED INSTRUCTION NO. 32—GIVE

You are instructed that the statute just read may be violated by "buyers" or "players".

### REWIS REQUEST NO. 12—DENY

You are hereby instructed that one who travels in interstate commerce for the purpose of buying or playing numbers is not thereby promoting, managing, establishing, carrying on or facilitating the promotion, management, or carrying on of a gambling operation. One who merely patronizes a gambling operation as a buyer or player is accordingly not within the statute prohibiting interstate travel with intent to promote, manage, establish or carry on the gambling operation or facilitate in promoting, managing establishing or carry on, the gambling operation.

### REWIS REQUESTED INSTRUCTION NO. 13—DENY

As you have been advised in connection with those counts charging that defendants travelled and caused travel in interstate commerce with intent to promote,

manage, establish, carry on or facilitate the promotion, management, establishment, and carrying on of an unlawful intent, one of the elements the government is required to prove beyond a reasonable doubt is that such interstate commerce did occur. This means that you must be convinced by the evidence, beyond and to the exclusion of a reasonable doubt, that there was in fact interstate travel by a party so charged. You must, further, be convinced that the evidence, beyond and to the exclusion of a reasonable doubt, that such interstate travel, if any, was for the purpose of, or was connected with, or had the direct effect of promoting, managing, establishing and carrying on an unlawful activity or of facilitating the same. Interstate travel not for the promotion, management, establishment, and carrying on an unlawful activity or for facilitating the same is not illegal and does not prove the charges in question. Therefore, unless you find that such interstate travel, if any, as was disclosed beyond and to the exclusion of a reasonable doubt by the evidence, was for the purpose of, connected with, or had the effect of promoting an unlawful activity, you must acquit the defendants so charged, because only interstate travel of such character is sufficient to support the counts in question, and interstate travel failing to have such character does not prove guilt.

[2559]

\* \* \* \*

### JURY CHARGE

The COURT: Members of the Jury, you have heard the arguments of counsel for the Government and for the defendants, and it now remains for the Court to give you the law in charge, to which you will apply

the facts as you find and believe them from the evidence in order [2560] that you may reach a verdict as to each of these defendants.

It is upon this evidence and that alone, when taken in connection with the law as now given to you in charge by the Court, that you are to base your verdicts.

You, as jurors, are to fairly and dispassionately consider all the evidence in the case and from it and from the law as charged you by the Court, arrive at your verdicts.

It is your province and yours alone to pass on the disputed issues of fact. And it is the Court's province to give you the law in charge which you are to apply to the facts as you find them.

You are not to single out one instruction alone as stating the law, but you must consider the instructions as a whole. And neither are you to be concerned about the wisdom of any Rule of Law, because, regardless of any opinion that you might have as to what the law ought to be, it would be a violation of your sworn duties and responsibilities as jurors to base verdicts upon any [2561] other view of the law than that which the Court will give you in the course of these instructions.

A trial such as this, Members of the Jury Panel, is a serious and earnest effort to determine the truth of controverted issues of fact, and the truth and that alone is what is desired by the Court, regardless of who it helps or hurts.

You are instructed that the Statute, 18 United States Code, 1952, under which this case is brought, provides as follows: subparagraph

“(a) Whoever travels in interstate or foreign commerce or uses any facility in interstate or foreign commerce, including the mail, with intent to promote,

manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity, and thereafter performs or attempts [2562] to perform the acts specified

And then section (b) of that statute provides:

“(b) As used in this Section ‘unlawful activity’ means any business enterprise involving gambling, in violation of the laws of the State in which committed.”

The Gambling Law of the State of Florida in Florida Statute 849.09, provides as follows: Subparagraph

“(1) It shall be unlawful for any person in this State to:

“(a) Set up, promote, or conduct any lottery for money or for anything of value.”

You are instructed that the Statute just read may be violated by “buyers” or “players”.

Included within the Statute just read is the word “facilitate”. As used in this Statute, the word “facilitate” is used in its ordinary and accepted meaning of “to make easy or less difficult”.

[2563] You are instructed that the “travel” described in the Criminal Statute just read (18 United States Code, 1952 Section) does not require that the travel facilitate the illegal activity; it requires merely that the person travelling have the intent to and actually facilitate or attempt to facilitate such activity.

To “travel in interstate commerce” means to travel across State lines “between one State \* \* \* and another State \* \* \*.”

You are instructed that the essential elements of the offense with which these defendants are charged are:

(1) Travel in interstate commerce;

(2) With intent to promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on, of any unlawful activity.

You are further instructed as used in this Section that "unlawful activity" includes any business enterprises involving gambling in violation of the Laws of the State in which committed.

[2564] (3) And thereafter perform or attempt to perform the promotion, management, establishment, or carrying on of the unlawful activity.

In a case where two or more persons are charged with the commission of a crime, the guilt of the accused may be established without proof that the accused personally did every act constituting the offense charged.

Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission is punishable as a principal.

Whoever wilfully causes an act to be done which if directly performed by him or another would be an offense against the United States is punishable as a principal.

Every person who thus wilfully participates in the commission of a crime may be found to be guilty of that offense.

Participation is wilful if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something [2565] the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

In order to aid and abet another to commit a crime, it is necessary that the accused wilfully associate himself in some way with the criminal venture, and wilfully participates in it as he would in something



he wishes to bring about; that is to say, that he wilfully seek by some act or omission of his to make the criminal venture succeed.

An act or omission is wilfully done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.

An accomplice is one who unites with another person in the commission of a crime, voluntarily and with common intent.

An accomplice does not become incompetent as a witness because of participation in the crime charged. On the contrary, the testimony [2566] of an accomplice alone, if believed by the Jury, may be of sufficient weight to sustain a verdict of guilty, even though not corroborated or supported by other evidence. However, the Jury should keep in mind that such testimony is always to be received with caution and weighed with great care.

You should never convict a defendant upon the unsupported testimony of an accomplice, unless you believe the unsupported testimony beyond a reasonable doubt.

Now, Section 371 of Title 18 of the United States Code provides, in part, that:

“If two or more persons conspire \* \* \* to commit any offense against the United States \* \* \* and one or more of such persons do any act to effect the object of the conspiracy, each shall be”—punished, as the law provides.

“Four essential elements are required to be proved in order to establish the offense of conspiracy charged in the indictment-[2567]ment:

“First: That the conspiracy described in the indictment was wilfully formed, and was existing at or about the time alleged;

“Second: That the accused wilfully became a member of the conspiracy;

“Third: That one of the conspirators thereafter knowingly committed at least one of the overt acts charged in the indictment, at or about the time and place alleged; and

“Fourth: That such overt act was knowingly done in furtherance of some object or purpose of the conspiracy, as charged.”

If the Jury should find beyond a reasonable doubt from the evidence in the case that existence of the conspiracy charged in the [2568] Indictment has been proved, and that during the existence of the conspiracy, one of the overt acts alleged was knowingly done by one of the conspirators in furtherance of some object or purpose of the conspiracy, then proof of the conspiracy offense charged is complete: and it is complete as to every person found by the Jury to have been wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators did the overt act.

A conspiracy is a combination of two or more persons, by concerted action, to accomplish some unlawful purpose, or to accomplish some lawful purpose by unlawful means. So, a conspiracy is a kind of “partnership in criminal purposes”, in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to disobey, or to disregard, the law.

Mere similarity of conduct among various persons, and the fact that they may have associated with each other, and may have assembled together and discussed

common aims [2569] and interests, does not necessarily establish proof of the existence of a conspiracy.

However, the evidence in the case need not show that the members entered into any express or formal agreement, or that they directly, by words spoken or in writing, stated between themselves what their object or purpose was to be, or the details thereof, or the means by which the object or purpose was to be accomplished. What the evidence in the case must show, Members of the Jury Panel, beyond a reasonable doubt, in order to establish proof that a conspiracy existed, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all of the means or methods set forth in the Indictment were agreed upon to carry out the alleged conspiracy; nor that all means or methods, which were agreed upon, were actually used or put into operation; nor that all of the persons charged to have been [2570] members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed, and that one or more of the means or methods described in the Indictment were agreed upon to be used, in an effort to effect or accomplish some object or purpose of the conspiracy, as charged in the Indictment; and that two or more persons, including one or more of the accused, were knowingly members of the conspiracy as charged in the Indictment.

One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of

a conspiracy, but happens to act in a way which furthers some object or purpose of the conspiracy, does not thereby become a conspirator.

Before the Jury may find that a defendant, or any other person, has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed, and that the [2571] defendant, or other person who is claimed to have been a member, wilfully participated in the unlawful plan, with the intent to advance or further some object or purpose of the conspiracy.

To act or participate wilfully means to act or participate voluntarily and intentionally, and with specific intent to do something the law forbids, or with specific intent to fail to do something the law requires to be done; that is to say, to act or to participate with the bad purpose either to disobey or to disregard the law. So, if a defendant, or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises, or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a wilful participant—a conspirator.

One who wilfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether or not a defendant, [2572] or any other person, was a member of a conspiracy, the Jury are not to consider what others may have said or done. That is to say, the membership of a defendant, or any other person, in a conspiracy, must be established by the evidence in the case as to his own conduct, what he himself wilfully said or did.

Here, the first Count of the Indictment charges a single conspiracy. And if the proof establishes more than one conspiracy, if you find that to be the case,

that is fatal to the Government's case because these defendants could be convicted only on the conspiracy charged in the Indictment, which is one single conspiracy and not several disjointed conspiracies.

The existence of the conspiracy cannot be established against an alleged conspirator by proof of the acts or declarations of his or her alleged co-conspirators done or made in his or her absence.

The existence of the conspiracy must be shown by independent evidence before the acts and declarations of an alleged co-conspirator [2573] can be used against an accused, and then it must be shown that the acts or declarations occurred during the course of the conspiracy and in pursuance of it.

During the course of the trial, proof of acts, statements and declarations of one or more of the defendants or some non-defendant in association with a defendant, made out of the presence of the other defendants, has been admitted in evidence. You are instructed that the acts, declarations and statements of one or more of the defendants made out of the presence of the other defendants are not binding upon such other defendants unless such other defendants are shown by the evidence beyond a reasonable doubt to have been participants in a conspiracy, and unless the acts, statements and declarations were made in the course of and in furtherance of the alleged conspiracy. The same rule applies to the exhibits that were received in evidence.

A criminal intent to participate in a conspiracy presupposes knowledge of the conspiracy. Without such knowledge, there can be [2574] no liability as a co-conspirator. Thus, the fact that a party commits illegal acts that further the object of the conspiracy does not make him a conspirator unless he had some knowledge of the conspiracy.

Where an overt act is required for a conspiracy prosecution, it must be an act done for the purpose of carrying out the conspiracy, a step toward its execution and a manifestation that the conspiracy is at work.

A conspiracy cannot be established by mere proof of defendant's association with guilty persons.

Mere presence on the occasion of a conspiracy is not sufficient to make a person guilty of being part of a conspiracy. While his presence at various times and places may be considered in determining whether there was a conspiracy and whether he was a party to it, more than mere presence is required to show guilt. The Government must prove beyond a reasonable doubt that a defendant took some positive action by act or word towards joining a conspiracy before he can be [2575] found guilty of doing so. Even if you find that a conspiracy did in fact exist, before you can convict a defendant, you must find some such positive action by him or her to have occurred other than mere presence, because mere presence is not sufficient for guilt.

Where the evidence proves separate and distinct conspiracies but does not prove the conspiracy charged in the Indictment, it is insufficient to support a conviction.

The Internal Revenue Code of the United States provides that a tax of \$50.00 per year shall be paid by each person who is engaged in the business of accepting wagers, or who is engaged in receiving wagers for or on behalf of any person in the business of accepting wagers. The Internal Revenue Service issues what is commonly known as a "Wagering Tax Stamp" upon the payment of the Occupational Tax.

Section 7203 of the Internal Revenue Code (26 United States Code, Section 7203) provides, in part, that: [2576] “any person required \* \* \* to pay any \* \* \* tax \* \* \* to make a return \* \* \*, keep any records, or supply any information who wilfully fails to pay such \* \* \* tax, make such return, keep such records, or supply such information \* \* \* shall \* \* \* be guilty \* \* \*” of an offense against the laws of the United States.

In prosecution for wilfully failing to register for and pay gambling tax, circumstantial evidence, aided or supplemented by presumption that defendant knew law, would support finding of such knowledge.

You are instructed that the phrase “engaged in the business of accepting wagers” as used in Counts Two and Three of the Indictment cover only persons having some proprietary interest in a business of accepting wagers or from persons directly engaged in the accepting of wagers or the selling or writing of tickets for wagers. A person [2577] engaged merely as a “pickup man” or “runner” who acts merely as a messenger or delivery man in connection with a gambling enterprise is not engaged in accepting wagers within the meaning of the Statute. Therefore, in order for you to find James W. Rewis guilty of Counts Two and Three of the Indictments, you must find that the Government has produced evidence that proves beyond and to the exclusion of a reasonable doubt that he had some proprietary interest in a gambling enterprise or was actively engaged in the sale or accepting of wagers.

You will note that the Indictment charges that the offense was committed on or about a certain date. The proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case established beyond a reasonable

doubt that the offense was committed on a date reasonably near the date alleged.

It is not necessary for the prosecution to prove knowledge of the accused that a particular act or failure to act is a violation [2578] of law. Unless and until outweighed by evidence in the case to the contrary, the presumption is that every person knows what the law forbids and what the law requires to be done. However, evidence that the accused acted or failed to act because of ignorance of the law is to be considered by the Jury in determining whether or not the accused acted or failed to act with specific intent as charged.

The Rules of Evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this Rule exists as to those whom we call expert witnesses. Witnesses who by education and experience have become expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which they profess to be expert and may also state their reasons for the opinion. You should consider each expert opinion received in evidence in this case and give it such weight as you think it deserves. If you should decide that the [2579] opinion of an expert witness is not based upon a sufficient education and experience or if you should conclude that the reasons given in support of the opinion are not sound, you may reject the opinion entirely.

Circumstantial evidence need not be inconsistent with every conclusion save that of guilt. It need only establish a case which is sufficient to convince a Jury beyond a reasonable doubt. If after consideration of all the evidence in the case, you have a reasonable doubt as to whether the defendant was present at the time and place the alleged offense was committed, you should acquit him.



During a trial, it often becomes the duty of counsel for the parties to object to questions or to evidence. It is the right of counsel to object to the introduction of or to move to strike out evidence he deems improper. You must not be prejudiced against either of the parties to this case because counsel have made such objections or motions or offers regardless of the [2580] Court's rulings thereon.

I instruct you that you shall not take into consideration against such party either such objections or the number of them, nor permit yourselves to be in any way influenced by such objections.

The fact that Mary Lee Williams' residence or house has been referred to at various times by the lawyers and witnesses in this case is not in and of itself evidence upon which you can base your verdicts in this case. The evidence upon which you will decide this case has come to you from live witnesses on the witness stand and various documentary evidence, and you will now apply the law as the Court is giving you in its charge to the evidence as you find and believe it and find your verdicts accordingly.

Now, each of the Counts in the Indictment charges a separate crime or a separate offense. The evidence sufficient to sustain one of the offenses is not necessarily sufficient to sustain the other and you may [2581] therefore find the defendants guilty or not guilty of one of the offenses charged, and this should not control your verdict with respect to the other substantive offenses charged.

In other words, Mrs. Kohler and Gentlemen of the Jury, each of the Counts stands on its own. You should consider the evidence relating to each Count separately in determining the guilt or innocence of each of the defendants with reference to each Count as applicable to each of them.

You are further instructed that the Government is required to prove the charge or charges made against the defendants and is required to prove every element of the charges. And if the Government fails to prove the charges and every element beyond and to the exclusion of every reasonable doubt as to the defendants as to each Count thereof as to what each defendant is charged with, then it is your duty to find the defendants not guilty.

Now, you are the triers of the facts. [2582] That is, you are the sole judges of the evidence, the weight of the evidence and the credibility of the several witnesses that have testified before you; that is, the believability of the witnesses who have testified before you.

You should consider the bias or prejudice, if any, of the witnesses; the interest or the lack of interest that the witnesses may have in the result of their testimony or in the outcome of the case, so that you may determine what effects, if any, that has had upon the testimony that they have given.

You may, Members of the Jury Panel, consider any corroboration or corroborations that you find in the evidence; likewise, any conflicts or contradictions that you may find between the various witnesses who have testified.

You may and you should consider the reasonableness or the lack of reasonableness of the testimony of the several witnesses, as judged by your common sense, everyday [2583] experience in human affairs.

It is your duty to take into consideration all of the facts and circumstances which are in evidence and which you believe to be true, together with the reasonable, ordinary, logical and usual deductions and inferences therefrom, and from those facts as so ascertained determine what is the truth of the facts in this

case and then apply the law as the Court is now giving it to you and return a verdict which reflects your conclusions upon those matters.

It is your duty, if you can, to reconcile the testimony of all of the witnesses so that all of the witnesses shall have spoken the truth. If, however, after a calm, careful, deliberate and dispassionate consideration and comparison of all of the evidence in the case, you are unable to reconcile the testimony of the several witnesses, then it is your duty under your oaths as jurors to reject the testimony of such witness or witnesses or such part thereof as you believe to be untrue and base your ver-[2584]dicts upon the evidence that you believe to be true.

An Indictment is but a formal method of accusing a defendant of a crime. It is not evidence of any kind against the accused and does not create any presumption or permit any inference of guilt.

The Court will furnish each of you with a revised copy of the Indictment to aid and assist you in considering the evidence and the applicable law which would apply to each of the remaining Counts of the Indictment.

There are two types of evidence from which a Jury may properly find a defendant guilty of a crime:

One is direct evidence, such as the testimony of an eyewitness.

The other is circumstantial evidence, the proof of a chain of circumstances pointing to the commission of the offense.

As a general rule, Members of the Jury Panel, the law makes no distinction between direct and circumstantial evidence but simply requires that before convicting a defendant, [2585] the Jury be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

Now, the defendants are not bound to explain anything and their failure to explain anything connected with the case cannot be considered by you as a circumstance that tends to prove the defendants guilty.

The defendants are presumed to be innocent until the Government by competent evidence has shown their guilt to the exclusion of and beyond a reasonable doubt. And the presumption of innocence remains with the defendants as to each and every material allegation of the Counts of the Indictment until it has been met and overcome by the evidence to the exclusion of and beyond a reasonable doubt.

If any one of the material allegations of each Count of the Indictment is not proved to the exclusion of and beyond a reasonable doubt, then you must give the defendant or defendants charged therein the benefit of the doubt and acquit him or her.

[2586] Now, by a reasonable doubt is not meant a speculative or fanciful doubt. If after you have carefully weighed the testimony and the exhibits which are before you in the light of the law which the Court is now giving to you, you have a full, firm, and abiding conviction to a moral certainty that either of the defendants or all are guilty as charged, then the guilt of that particular defendant has been established beyond a reasonable doubt. If you do not have such a full, firm, and abiding conviction, then of course the guilt of that defendant has not been established beyond a reasonable doubt.

The law does not require a person to be proved guilty to a mathematical certainty but only to a moral certainty. A reasonable doubt remains, however, when, after weighing all the evidence, you do not feel to a moral certainty that the charges are true.

And I further charge you, Members of the Jury Panel, that your verdict should be the verdicts of each and everyone of you and [2587] should not be

left to lot or to chance. Moreover, your verdicts must be unanimous. It is not enough that most of you agree to it or that the verdicts are those of a portion of the Jury less than all of you. The verdicts must be agreed upon by each of you and by all of you.

\* \* \* \* \*

In the United States Court of Appeals for the Fifth  
Circuit

No. 25625

JAMES WINTFORD REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25919

MARY LEE WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25631

ROBERT LEE FULLER, SR. AND OLIVER LOUIS NIGHTEN-  
GALE, SR., APPELLANTS

v.

UNITED STATES OF AMERICA, APPELLEE

*Appeals from the United States District Court for  
the Middle District of Florida*

(December 5, 1969)

Before TUTTLE, WISDOM and BELL, Circuit Judges.  
TUTTLE, Circuit Judge: This is a consolidated ap-  
peal from three separate convictions in the United

States District Court for the Middle District of Florida. The appellants were tried before a jury and convicted on various counts of violating U.S.C.A. § 1952.<sup>1</sup>

The appellants, James Rewis, Mary Lee Williams, Robert Lee Fuller and Oliver Nightengale, were indicted with seven other defendants in connection with an alleged numbers operation, which, without dispute, was being conducted at the home of Mary Lee Williams in the town of Yulee, Florida, a small community approximately fifteen miles south of the Georgia-Florida state line. Judgment of acquittal was entered by the trial court as to four defendants and the jury thereafter acquitted two other defendants, but returned

---

<sup>1</sup> § 1952. Interstate and foreign travel or transportation in aid of racketeering enterprises.

(a) Whoever travels in interstate or foreign commerce or uses any facility or foreign commerce, including the mail, with intent to—

(1) distribute the proceeds of any unlawful activity; or  
(2) commit any crime of violence to further any unlawful activity; or

(3) otherwise promote, manage, establish, carry on, or facilitate the promotion, management, establishment, or carrying on of any unlawful activity,

and thereafter performs or attempts to perform any of the acts specified in subparagraphs (1), (2) and (3) shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

(b) As used in this section "unlawful activity" means (1) any business enterprise involving gambling, liquor on which the Federal excise tax has not been paid, narcotics, or prostitution offenses in violation of the laws of the State in which they are committed or of the United States, or (2) extortion, bribery or arson in violation of the laws of the States in which committed or of the United States.

(c) Investigations of violations under this section involving liquor or narcotics shall be conducted under the supervision of the Secretary of the Treasury.

guilty verdicts against all of the appellants on various counts of violating this section of the Federal Criminal Code. The government argues that Rewis was the leader of the operation which was being conducted at Mary Lee Williams' home and that the other appellants, Fuller and Nightengale, were connected with the operation as workers or as players. Only Rewis and Williams were Florida residents. Fuller, Nightengale and the other acquitted defendants were Georgia residents. The government's theory was that Fuller and Nightengale actually travelled in interstate commerce with the intent to violate the Florida statute, Section 849.09, outlawing the promoting or conducting of any lottery; that they would be guilty whether they used these interstate facilities for the purpose of coming into Florida and placing bets themselves at the Williams' residence, or were acting as employees of Williams and/or Rewis in the conduct of the operation. The government contends that in either event they would be guilty of the substantive counts for which they were convicted, even though they were both acquitted of the conspiracy count.

The government further contends that whether or not Fuller and Nightengale were proved to have been co-conspirators, nevertheless the conspiracy and substantive charges against Rewis and Williams would stand, because they were shown by ample evidence to have caused Fuller and Nightengale, as well as other unnamed or named travelers from Georgia to patronize the establishment for gambling purposes.

The case against Fuller and Nightengale is very thin, indeed, if it must, as we think it does, depend upon a showing that they were other than bettors themselves.

Whether the reading of the federal statute be casual or intense, it appears that it is not aimed at making a federal crime out of a person's crossing a state line for the purpose of placing a bet, if the placing of such a bet is a crime in the state which he enters. If appellants Fuller and Nightengale are to come within the coverage of Section 1952(a)(3), it would require a broad interpretation of "carry on" or "facilitate." The language of the statute appears clearly to be aimed at those things or people who aid, help or assist the promotion of, or making easier or possible, the illegal actions mentioned in paragraph three. We think that, at the least, the word "facilitate" means, as stated by the Court of Appeals for the Seventh Circuit, in *United States v. Miller*, 379 F. 2d 483, at 486, "to make easy or less difficult." We do not believe that the patronizing by interstate gamblers of a gambling establishment fits within the terminology of "promote, manage, establish, carry on, or facilitate the promotion, management, establishment or carrying on of any unlawful activity."

It thus becomes unnecessary for us to determine whether the Florida statute which the government contends these two appellants crossed state lines to violate is itself violated by a person's participating as a bettor as distinguished from a person acting in a proprietary manner.

We conclude that the convictions against Fuller and Nightengale cannot stand because there was insufficient evidence to show that they were other than participators in placing bets at the Williams establishment, and, as such, they could not have been found by the jury to have been guilty of any overt act prohibited by the federal statute.

What has been said thus far does not apply to Rewis and Williams. It is not in dispute that these



two appellants were the actual proprietors of a numbers game which was frequented by patrons who crossed the Georgia state line to reach their place. Moreover, there is actual evidence of the participation in the gambling taking place at the Williams' residence by these two particular non-residents, Fuller and Nightengale. There is no merit in the argument, made on behalf of Rewis and Williams, that because we find Fuller and Nightengale were not members of the conspiracy *their* conviction as conspirators should be set aside. The jury verdict need not be construed as holding that Fuller and Nightengale did not utilize the facilities of interstate travel to patronize the gambling establishment operated by these appellants.

Appellants further contend, however, that neither Rewis nor Williams was shown ever to have crossed any state lines in connection with their undoubted violation of the Florida anti-gambling statute. We must thus, therefore, determine whether their conduct in holding themselves out as a place where interstate travelers could place bets was itself a violation of subsection (3) of Section 1952, prohibiting "promoting, managing, establishing, carrying on or facilitating the promotion, management, establishment or carrying on" an activity prohibited by the Florida criminal statutes.

Appellants argue strenuously that the acquittal of the bettor defendants and the failure of the jury to convict Fuller and Nightengale of the conspiracy count, makes impossible a conviction of Rewis and Mary Lee Williams of either the conspiracy to violate the federal statute or the overt act violations for which they were convicted. This, appellants say, follows because this being an interstate conspiracy there must be proof of an interstate overt act to sustain it. We think,

to the contrary, that it is enough to point out that the jury's finding that none of the Georgia defendants joined in the conspiracy with Rewis and Williams is not inconsistent with the jury's verdict that Rewis and Williams agreed to operate a lottery which would be "facilitated" by being patronized by persons coming to it from outside of the state of Florida. Acquittal of those charged with traveling from Georgia does not negate the fact of their travel. It merely negates the mental element of intent to join a conspiracy which was a prerequisite to a conviction on that count. The acquittal of those traveling from Georgia on the substantive counts also does not negate the fact of their traveling and placing bets; it merely negates the fact that such travel and placing bets by these persons did not amount to a violation of Section 1952(3).

The record amply supports the fact that Rewis and Williams, as operators, managers and proprietors of the gambling establishment, were guilty of the conspiracy as charged, and of the overt acts as charged as separate offenses.

Basically what we decide is that the operation by Rewis and Williams of the gambling establishment with full knowledge that it was being maintained largely by the attraction of interstate customers, was sufficient to warrant the jury's finding them guilty of a conspiracy to conduct such an operation and also to find them guilty of the specific charges of substantive acts in violation of the statute which produced their convictions and sentences.

Of course, the government concedes that the conviction on the charge contained in Counts Two and Three as to the wagering stamp tax must fall in light of the Supreme Court's decision in *Grosso v. United States*, 390 U.S. 62, (1968), and *Marchetti v. United*

*States*, 390 U.S. 39, (1968). We do not think that the reversal of the conviction on these charges by reason of the Supreme Court's invalidating these provisions of the statute requires a reversal and new trial on the other counts. See *United States v. Kelly*, 2 Cir., 1968, 395 F. 2d 727, cert. denied 393 U.S. 963. It appears that the only proof adduced on Counts Two and Three in this case which was not admissible on the other counts as well was the testimony offered to show appellants' failure to register or pay the wagering tax. There was ample proof to show that Rewis and Williams were engaged in the business of gambling, and it is difficult to understand how any prejudice could have resulted from this evidence.

The appellants complain of other matters which the court has carefully considered, but find to be without merit. We have carefully considered each of them and find that they are either without substance or that no prejudice could have resulted from the action taken by the trial court.

The one point of significance on this appeal is the question whether the attraction by Rewis and Williams of interstate gamblers to their place near the state boundary comes within the definition of the crime described in Section 1952. This question is not entirely free from doubt, but is solely a matter of construction of the statute. We conclude that the conduct of these appellants caused the interstate travel by those who placed bets with them, and thus came within the prohibition of the statute. While not entirely analogous, the following cases may be cited as giving some support to this conclusion: *United States v. Barrow*, 212 F. Supp. 837, aff'd 363 F. 2d 62 (3 Cir., 1964); *United States v. Kelley*, 2 Cir., 1968, 395 F. 2d 727, cert. denied 393 U.S. 963. We think that the gambler operators of the gambling establishment are respon-

sible, under the terms of this statute, for the use of interstate facilities, by way of interstate travel, of those whose participation is vital to the success of his business.

The judgments are **AFFIRMED**.

---

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1969

No. 25625

(D. C. Docket No. 66-65-CR-J)

JAMES WINTFORD REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*Appeal from the United States District Court for the  
Middle District of Florida*

Before TUTTLE, WISDOM and BELL, Circuit Judges.

### JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

DECEMBER 5, 1969.

Issued as Mandate: \_\_\_\_\_

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1969

No. 25919

(D. C. Docket No. 66-65-Cr-J)

MARY LEE WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*Appeal from the United States District Court for the  
Middle District of Florida.*

Before TUTTLE, WISDOM and BELL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

DECEMBER 5, 1969.

Issued as Mandate:

---

[U.S. Court of Appeals, Filed April 7, 1970, Edward  
W. Wadsworth, Clerk]

In the United States Court of Appeals for the Fifth  
Circuit

No. 25625

JAMES WINTFORD REWIS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

No. 25919

MARY LEE WILLIAMS, APPELLANT

v.

UNITED STATES OF AMERICA, APPELLEE

*Appeals from the United States District Court for the  
Middle District of Florida*

(April 7, 1970)

ON PETITION FOR REHEARING

Before TUTTLE, WISDOM and BELL, Circuit Judges.  
Per Curiam:

IT IS ORDERED that the petition for rehearing  
filed in the above entitled and numbered cause be and  
the same is hereby DENIED.

---

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5342

JAMES WINTFORD REWIS AND MARY LEE WILLIAMS,  
PETITIONERS

v.

UNITED STATES

On petition for writ of Certiorari to the United  
States Circuit Court of Appeals for the Fifth Circuit.

On **CONSIDERATION** of the motion for leave to proceed herein in forma pauperis and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed in forma pauperis be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

OCTOBER 12, 1970.